



# California Fair Political Practices Commission

September 21, 1989

Judith A. Harper  
Kronick, Moskovitz, Tiedemann and Girard  
Attorneys at Law  
770 L Street, Suite 1200  
Sacramento, CA 95814-3363

Re: Your Request for Informal Assistance  
Our File No. I-89-435

Dear Ms. Harper:

On behalf of your client, the California School Boards Association, you have asked for reconsideration of our advice to Mr. Jeff C. Marderosian (No. I-89-212, copy enclosed) under the provisions of the Political Reform Act (the "Act").<sup>1</sup>

Your letter does not provide sufficient facts for us to provide a specific response. Accordingly, we consider your request to be for informal assistance pursuant to Regulation 18329(c).<sup>2</sup> Please note that the Commission is currently reconsidering various aspects of Regulation 18901. Since the Commission may amend the regulation in the near future, the advice in this letter is subject to change.

## QUESTION

Does inclusion of photographs of elected school board members in school yearbooks violate the mass mailing prohibitions of the Act?

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<sup>1</sup> Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### CONCLUSION

Inclusion of photographs of elected school board members in school yearbooks would not violate the mass mailing prohibitions of the Act if students who purchase the yearbooks do so in response to solicitations by the students who produced the yearbooks, and the students who produced the yearbooks are not acting at the behest of school board members. However, the Act does not permit school board members to require inclusion of their photographs in the yearbooks.

### FACTS

The California School Boards Association is comprised of school board members from all California school districts. School board members are elected officials. Photographs of school board members have traditionally been included in school yearbooks throughout California.

In our Marderosian Advice Letter, supra, we concluded that inclusion of photographs of elected board members of a school district in school yearbooks violated the mass mailing prohibition of the Act. You have asked for reconsideration of this advice.

Your request for reconsideration is based on your belief that school board members play no role in inducing students to subscribe to the yearbooks and do not solicit the students to purchase the yearbooks. According to your letter, if any solicitation occurs, it is on behalf of other students involved in yearbook production, not on behalf of board members. If the yearbooks are "unsolicited," they are not "mass mailings" subject to the restrictions of the Act.

### ANALYSIS

As we stated in Marderosian, supra, Section 89001 prohibits mass mailings sent at public expense. A mass mailing consists of over two hundred substantially similar pieces of mail sent in any calendar month. (Section 82041.5, Regulation 18901(d), copy enclosed.) With limited exceptions, mass mailings which include the name, photograph, signature or other reference to elected officers are prohibited if any of the cost of design, production, printing or distribution, is paid for with public moneys. (Regulation 18901(a).)

The mass mailing prohibitions of the Act do not apply to information or material sent in response to "unsolicited" specific requests contained in written correspondence or oral inquiries received by the elected officer or by an agency with which the officer is affiliated. (Section 82041.5, Regulation 18901(b).) As used in Regulation 18901, a request is "unsolicited" when it is

not induced by the officeholder or any third person acting at his or her behest. (Regulation 18901(h), emphasis added.)

Accordingly, for the yearbooks to be a prohibited "mass mailing," the following four elements must exist:

(1) The yearbooks contain the name, photograph, signature or other reference to an elected officer, outside of a roster listing of all the elected officers of the school district.

(2) More than 200 copies of the yearbooks are distributed in a calendar month.

(3) The yearbooks are produced or distributed at public expense.

(4) Purchase of the yearbooks is induced by an elected officer or any third person acting at his or her behest.

The yearbooks in question contain photographs of elected school board members, thus meeting one of the elements of a "mass mailing." More than 200 copies are distributed in a calendar month. These yearbooks are produced at public expense. This is so because the cost of design and production is borne, at least partially, by the school district, a public entity. If all the cost of production of the yearbook, including teacher salaries and classroom supplies, is recovered through advertising sponsors and the sale price of the yearbook, then the mass mailing prohibition would not apply. However, you have informed us that this is not the case.

Thus, the yearbooks in question meet the first three elements of a prohibited "mass mailing." However, as you correctly point out, the yearbooks are not prohibited "mass mailings" if the school board members play no role in inducing students to subscribe to the yearbooks that contain the board members' photographs. If students who purchase the yearbooks do so in response to solicitations by the students who produced the yearbooks, and the students who produced the yearbooks are not acting at the behest of the school board members, the yearbooks would not meet the fourth element of a prohibited "mass mailing." In that case, distribution of yearbooks containing the photographs of board members would not violate Section 89001.

We caution, however, that Section 89001 does not permit school board members to require inclusion of their photographs in the yearbooks. Such a requirement would be tantamount to making students who produce the yearbooks the agents of board members in the distribution of materials containing the board members' photographs. Thus, if the school board members direct that the

yearbooks include their photographs, the yearbooks would be a mass mailing sent at public expense, prohibited by Section 89001.

I trust we have adequately responded to your request for reconsideration of our previous advice. Should you have any further questions or comments regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in black ink, appearing to read "Blanca M. Breeze". The signature is fluid and cursive, with the first name being the most prominent.

By: Blanca M. Breeze  
Counsel, Legal Division

KED:BMB:plh

Enclosures

cc: Jeff C. Marderosian

## KRONICK, MOSKOVITZ, TIEDEMANN &amp; GIRARD FPPC

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Jul 24 8 57 AM '89

JUDITH A. HARPER

July 20, 1989

Kathryn E. Donovan, General Counsel  
Fair Political Practices Commission  
429 J Street, 8th floor  
Sacramento 95814

Re: Mass Mailings and School Yearbooks

Dear Ms. Donovan:

I am writing on behalf of our client, the California School Boards Association, a group that is comprised of school board members from all California school districts.

In your advice letter to Jeff C. Marderosian (your File No. I-89-212), you concluded that photographs of elected board members of a school district could not be included in school yearbooks. Ms. Breeze found that yearbooks fell within the definition of the mass mailings prohibited by Proposition 73, and that board members "affiliated" with the district could not be "featured" in the yearbook by inclusion of their photographs in the publication.

I would ask that this advice letter be presented to and discussed by the Commission at its August 15th meeting. I believe that reconsideration of this advice may yield a different result for the reasons outlined below.

I also ask that, before that meeting, you advise me as to the merits of my conclusion that yearbooks are exempted from the mass mailing prohibitions because they should be considered "unsolicited requests".

Yearbooks do fit the technical definition of mass mailings (200 or more substantially similar pieces of mail sent at public expense). Without more, the inclusion of photographs of elected officers affiliated with the school district would be improper.

However, the elected officers in question, i.e. the school board members, play no role in inducing students to subscribe to the yearbooks that may contain their photographs.

Kathryn E. Donovan, General Counsel  
July 20, 1989  
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The students pay for their yearbooks, although the amount they pay traditionally does not cover all the expenses of publishing a yearbook. If any solicitation occurs, it is on behalf of other students involved in yearbook production, not the board members.

I believe therefore that subscriptions to yearbooks should be categorized as "unsolicited requests" and thus not restricted by the regulations on mass mailings.

Thank you for your time and consideration. If you have questions, please do not hesitate to contact me directly.

Very truly yours,

*Judith A. Harper/sk*

JUDITH A. HARPER

JAH/skl



# California Fair Political Practices Commission

July 25, 1989

Judith A. Harper  
Kronick, Moskovitz, Tiedemann  
& Girard  
770 L Street, Suite 1200  
Sacramento, CA 95814-3363

Re: Letter No. 89-435

Dear Ms. Harper:

Your letter requesting advice under the Political Reform Act was received on July 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh

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